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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL ALEXANDER RENEAU,

Defendant and Appellant.

E035487

(Super.Ct.No. FVI014109)

OPINION

APPEAL from the Superior Court of San Bernardino County. Larry W. Allen,
Judge. Affirmed.

Patrick J. Hennessey, Jr., under appointment by the Court of Appeal, for
Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Gary W. Schons, Senior Assistant Attorney General, and Melissa A. Mandel,
Supervising Deputy Attorney General, for Plaintiff and Respondent.

Defendant pleaded guilty to willfully evading a police officer (Veh. Code, § 2800.2, subd. (a)) (count 1); driving under the influence of alcohol or drugs (Veh. Code, § 23152, subd. (a)) (count 2); being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)) (count 3); and resisting a police officer (Pen. Code, § 148, subd. (a)(1))¹ (count 4). Defendant also admitted that he had suffered three prior strike convictions within the meaning of section 667, subdivisions (b) through (i), and that he had served four prior prison terms within the meaning of section 667.5, subdivision (b). After the trial court denied defendant's motion to dismiss any of his prior strike convictions, defendant was sentenced to a total term of 25 years to life in state prison.² Defendant's sole contention on appeal is that the trial court abused its discretion in refusing to strike his prior strike convictions. We find no abuse and will affirm the judgment.

I

FACTUAL BACKGROUND³

On August 7, 2001, about 9:54 a.m., California Highway Patrol Canine Officer Mike Blaine was parked in a marked patrol vehicle on the shoulder of Interstate 15 monitoring traffic near the Joshua Tree overpass. At that time, Officer Blaine used a

¹ All future statutory references are to the Penal Code unless otherwise stated.

² The court, however, struck the four prior prison terms.

³ The factual background is taken from the probation officer's report and the preliminary hearing transcript.

radar gun and clocked defendant driving a red vehicle traveling northbound about 109 miles per hour.

Immediately thereafter, Officer Blaine activated his vehicle's lights and pursued the red vehicle. Defendant exited the Hesperia Main Street exit at a high rate of speed and caused a large, thick cloud of dust to rise, which temporarily forced Officer Blaine to stop. Officer Blaine then observed the vehicle proceeding eastbound on Main Street at 10 to 15 miles per hour. Officer Blaine accelerated to catch up with defendant's vehicle. As Officer Blaine approached, defendant turned south behind several local businesses and slowed down to two or three miles per hour. Using his public address system, Officer Blaine advised defendant to stop the car and put his hands up. Officer Blaine noted defendant in the driver's seat looking at the officer in the rearview mirror and also saw two passengers in the vehicle, a female in the front passenger seat and a male in the back seat.

Instead of complying with the officer's request, defendant drove off at a high rate of speed and proceeded eastbound on Main Street. Twice defendant sped through red lights at speeds of 90 to 100 miles per hour. Defendant also swerved into oncoming traffic, forcing three other vehicles to turn sharply off the road. Officer Blaine continued to chase defendant at this high rate of speed for approximately 10 to 15 miles.

Shortly after defendant's vehicle made a U-turn against another red light, the vehicle stopped, and the two passengers exited and were detained by police who were assisting in the high speed pursuit. Defendant, however, did not exit the vehicle and sped away.

At one point, defendant stopped the vehicle, opened the door, and placed his feet on the ground. He was given orders by the officers but refused to comply. Officer Blaine then released his police canine toward defendant. Defendant closed the car door and drove away at a high rate of speed.

In an attempt to stop the vehicle as it headed back towards Interstate 15, a spike strip was placed across Phelan Road, but defendant avoided it by swerving into another lane. Eventually, defendant stopped and exited the vehicle. He walked away from the officers as he yelled obscenities at them and talked on a cellular telephone.

When defendant refused to comply with Officer Blaine's orders, the police canine was released, and defendant was subsequently taken to the ground by the canine. Defendant was ultimately subdued by the use of pepper spray and was later taken to a hospital and treated for injuries from the canine. At that time, it was determined that defendant was under the influence of PCP (phencyclidine), a controlled substance.

After he waived his constitutional rights, defendant informed officers that he was extremely distraught over the custody of his two-year-old daughter. He claimed that child protective services refused to release his daughter into his custody due to drug-related problems with his common-law wife. He was upset over his struggles to get his daughter back. Defendant denied using any type of illegal drugs and also denied discarding any drugs during the pursuit.⁴

⁴ During the pursuit, defendant was seen throwing plastic baggies out of the car.

II

DISCUSSION

Defendant contends the trial court abused its discretion when it denied his motion to strike his prior strike convictions. We disagree.

At the sentencing hearing on this case, defendant moved the court to exercise its discretion pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*) to strike one of his prior strike convictions.⁵ After the court examined the relevant law, the parties' motions, defendant's records, and defendant's letter; heard arguments from counsel, a statement from defendant, and testimony from defendant's son; and weighed the relevant factors, it denied the motion. The court noted defendant's criminal history, which spanned a period of 23 years involving numerous parole violations and state prison terms; the fact that the priors arose out of one incident; defendant's remorse; defendant's acting out of desperation in this case due to what occurred with his daughter; defendant's drug addiction; and the circumstances of the current offenses. Based on the relevant factors, the court opined that defendant fell within the spirit of the three strikes law.

A trial court's decision to not dismiss or strike a prior serious and/or violent felony conviction allegation under section 1385 is reviewed for abuse of discretion. (*People v. Carmony* 33 Cal.4th 367.) "In reviewing for abuse of discretion, we are guided by two

⁵ During argument, the prosecutor pointed out that the court had to strike two prior strike convictions to render defendant outside the spirit of the three strikes law. In 1989, defendant had been convicted of three counts of robbery (§ 211).

fundamental precepts. First, “[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve the legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.” [Citation.] Second, a “decision will not be reversed merely because reasonable people might disagree. ‘An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.’” [Citation.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Id.* at pp. 376-377, quoting *People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978, quoting *People v. Superior Court (Du)* (1992) 5 Cal.App.4th 822, 831 and *People v. Preyer* (1985) 164 Cal.App.3d 568, 573; see also *People v. Myers* (1999) 69 Cal.App.4th 305, 309.)

“In light of this presumption, a trial court will only abuse its discretion in failing to strike a prior felony conviction allegation in limited circumstances. For example, an abuse of discretion occurs where the trial court was not ‘aware of its discretion’ to dismiss [citation], or where the court considered impermissible factors in declining to dismiss [citation].” (*People v. Carmony, supra*, 33 Cal.4th at p. 378, citing *People v. Langevin* (1984) 155 Cal.App.3d 520, 524 and *People v. Gillispie* (1997) 60 Cal.App.4th 429, 434.) Discretion is also abused when the trial court’s decision to strike or not to strike a prior is not in conformity with the “spirit” of the law. (*People v. Williams* (1998) 17 Cal.4th 148, 161 (*Williams*); *People v. Myers, supra*, 69 Cal.App.4th at p. 310.)

But “[i]t is not enough to show that reasonable people might disagree about whether to strike one or more of his prior convictions. Where the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court’s ruling, even if we might have ruled differently in the first instance. [Citation.]” (*People v. Myers, supra*, 69 Cal.App.4th at p. 310.) “Because the circumstances must be ‘extraordinary . . . by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack’ [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary.” (*People v. Carmony, supra*, 33 Cal.4th at p. 378, quoting *People v. Strong* (2001) 87 Cal.App.4th 328, 338.)

The touchstone of the analysis must be “whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*Williams, supra*, 17 Cal.4th 148, 161; see also *People v. Garcia* (1999) 20 Cal.4th 490, 498-499.)

Defendant contends the court should have granted his request to strike two of his strikes based on his personal background; the fact that the court agreed to dismiss the

strikes in a subsequent assault case, which was resolved before the present case; and the fact that his priors arose out of one incident.⁶ We cannot conclude the trial court abused its discretion in declining to strike two of defendant's prior strike convictions.

The relevant considerations supported the trial court's ruling, and there is nothing in the record to show that the court declined to exercise its discretion on improper reasons or that it failed to consider the relevant factors, including defendant's personal and criminal background. In fact, the record clearly shows the court was aware of its discretion, aware of the applicable factors a court must consider in dismissing a prior strike, and appropriately applied the factors as outlined in *Williams*. Defendant has manifested a persistent inability to conform his conduct to the requirements of the law. Defendant's past criminal history was extensive and serious. He began the life of crime in 1981 when he was convicted of second degree burglary (§ 459). In 1982, he was arrested for burglary and assault with a deadly weapon on a peace officer (§ 245, subd. (b)). He was eventually convicted of second degree burglary in September of 1982. And only a month after being paroled, in January 1984, he was arrested for petty theft with a

⁶ Defendant repeatedly argues that because the same court struck his strikes on October 22, 2002, on an unrelated assault matter, which had occurred after the present case, the court should have stricken the strikes in this case. We reject this contention. First, the court did not exercise its discretion to strike the strikes in that case; rather, defendant reached a plea agreement with the People whereby he received a four-year sentence, and the People agreed to strike the strikes. As the prosecutor in this case pointed out and as defense counsel here noted, the prosecutor in that case agreed to strike the strikes because there were proof problems in the assault case "which justified striking the two strikes" Second, the court here did consider the fact that the People in the assault case agreed to strike the two strikes but exercised its discretion to not strike them in this case after weighing the relevant factors.

prior (§ 666). Thereafter, in July 1984, defendant was again convicted of second degree burglary. After being paroled in 1985, defendant violated his parole once in 1986 and three times in 1988. In 1990, defendant was convicted of three counts of robbery (§ 211), being an ex-felon in possession of a firearm (§ 12021, subd. (a)(1)), and vehicle theft (Veh. Code, § 10851). Following those convictions, he violated his parole once in 1994, twice in 1996, and once in 1997. Defendant then committed the instant offenses in August 2001 and committed an aggravated assault (§ 245, subd. (a)(1)) in October 2001. Moreover, defendant's current crimes presented a serious risk to the public. Defendant drove recklessly and dangerously at a high rate of speed while under the influence of PCP.

Although defendant points out his personal background and the changes he had made, the court could not overlook the fact defendant consistently committed criminal offenses for the past 23 years. His conduct as a whole was a strong indication of unwillingness or inability to comply with the law. It is clear from the record that prior rehabilitative efforts have been unsuccessful for defendant. Indeed, defendant's prospects for the future look no better than the past, in light of defendant's record of prior offense and reoffense and his underlying drug addiction. There is no indication from the record here that the court failed to consider the relevant factors or that it abused its discretion in determining that, as a flagrant recidivist, defendant was not outside the spirit of the three strikes law. (*Williams, supra*, 17 Cal.4th 148, 161.)

Striking a prior serious felony conviction “is an extraordinary exercise of discretion, and is very much like setting aside a judgment of conviction after trial.’

[Citation.]” (*People v. McGlothin* (1998) 67 Cal.App.4th 468, 474.) Accordingly, such action is reserved for “[e]xtraordinary” circumstances. (*People v. Strong* (2001) 87 Cal.App.4th 328, 332.) This case, however, is far from extraordinary. Accordingly, given defendant’s continuous criminal history, his parole violations, the seriousness of the present and past offenses, and his seemingly dim prospects for rehabilitation and lack of meaningful crime-free periods, the court did not abuse its discretion in denying the *Romero* motion. The trial court’s decision not to strike defendant’s priors was neither irrational nor arbitrary.

III

DISPOSITION

The judgment is affirmed.

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RICHLI
J.

We concur:

RAMIREZ
P.J.

KING
J.